2000

F.L. Byron and Charles S. Austin v. Utah Copper Company : Reply Brief

Utah Supreme Court

No. 3240.

IN THE

SUPREME COURT OF THE STATE OF UTAH

OCTOBER TERM, 1918.

F. L. BYRON AND CHARLES S. AUSTIN,
RESPONDENTS,

vs.

UTAH COPPER COMPANY, A CORPORATION,
APPELLANT,

AND

JOHN KNUDSON AND GEORGE C. EARL,
DEFENDANTS,

AND

STEPHEN HAYS, IMPLEADED AS AN ADDITIONAL DEFENDANT, RESPONDENT.

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

Hon. George F. Goodwin, Judge.

REPLY BRIEF ON BEHALF OF APPELLANT.

Counsel say that the omission to bring up a bill of exceptions was for reasons "best known to appellants." Obviously, the reasons for the omission cannot affect the judgment of this court either the one way or the other. But justice and a sense of fairness in repelling the insinuation that such a bill might have been unfavorable, demands that it be stated that the omission was attributable to a misunderstanding between counsel, whereunder the time to file the bill was inadvertently permitted to expire.

It is true that the deed itself is not in the record, nor is the lease. But its exact terms quoted in our main brief are in the identical language of the court's findings of fact.

Our statements of fact are limited to the court's finding. Where we mentioned a fact, we referred to every page of the record where it was touched upon, whether in the pleadings, the opinion, or the findings; but in each instance the statement of fact is limited to the finding of fact.

Counsel devote much of their brief to asserting a presumption that the findings were borne out by the evidence. No such question is presented here.

The finding that Hays was the "owner," etc., was not a finding of the ultimate fact in the sense that such expressions were used in the cases cited by counsel.

There can be no assumption that there was some other warranty deed from the Copper Company to Hays. No such deed is mentioned in the findings. It would not have been admissible under the pleadings. *The complaint asserted that Hays owned the ore simply and solely by virtue of the reservation in his deed. That is all the court found. That is all the court could have found under the pleadings.* To cast about for an excuse to defeat justice in this case upon any such unwarranted assumption as is suggested, is not worthy of the effort of a court of conscience.

We may say the same thing as to the assumption that the deed may have contained provisions other than those recited in the complaint and found by the court. A decision predicated upon such an idea would be pitiful. It is just such strained ideas that have brought reproach upon some courts and the legal profession. It converts a litigation from an investigation of truth into a mere game.

Respectfully submitted,

DICKSON, ELLIS & LUCAS,
L. F. ADAMSON,
Attorneys for Appellant.